MAXIM SYSTEMS, INC.
An Employee-Owned Company

2001-014-149

24 May 2001
Ltr. No. 02-158-09

General Services Administration
FAR Secretariat (MVP)
1800 F Street NW, Room 4035
Washington, DC 20405

Attention: Laura Duarte

Reference: FAR Case 1999-014 (Revocation)

Dear Ms Duarte:

The purpose of this letter is to urge the rescission of the blacklisting regulation. The rule provides vague unclear standards with which contracting officers are to determine contractor responsibility.

As a small business, MAXIM is concerned that small businesses would be most severely injured by blacklisting. Unlike major corporations, many small businesses depend entirely on the revenues from current and future government contracts for continued growth. This rule could keep many small-business owners from competing fairly for these contracts As a result, small businesses will be discouraged from even bidding on federal contracts.

The "responsibility" regulations contained in Section 9 of the Federal Acquisitions Regulation (FAR) prohibit awarding government contracts to companies with irresponsible or unethical policies and business practices. Under the new rule, denial of contractor eligibility is still based on a government contracting officer's untrained interpretation of technical provisions of labor and employment, environmental, antitrust, tax, or consumer protection laws.

Blacklisting would affect union and nonunion employers, regardless of size. Employers could be targeted for blacklisting by competitors, disgruntled employees, anti-government contractor activists, and others who could benefit by filing allegations and complaints against the company. In addition, unions see blacklisting as a powerful organizing tool-threatening nonunion companies, colleges and universities, hospitals and other employers who depend on federal contracts with blacklisting through corporate campaigns and filing complaints with the National Labor Relations Board and other federal agencies.

If this rule is not overturned, there will be four serious consequences of national importance: (1) the safeguards that ensure fair, full and open competition for the over $170 billion awarded annually in federal contracts will be destroyed, (2) taxpayers will bear the burden of greater costs for this highly politicized federal contracting; (3) the careful balance in U.S. labor-management relations will be sacrificed because unions will have the unprecedented threat of federal blacklisting to use in organizing and collective bargaining; (4) Federal labor, employment, tax antitrust, environmental and consumer laws will be amended and rewritten by executive fiat, to provide new anti-employer, anti-worker penalty, bypassing Congress, which is charged with the constitutional responsibility of drafting federal laws.

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The new rule still exposes employers to unfair denial of federal contracts based on any violation (without regard to severity, number, intent, or status of any appeal) of any labor and employment, environmental, antitrust, tax, or consumer protection laws over the three (3) years preceding the contract.

Under the new rule, contract denial can be based on any adverse court judgment, in civil cases brought by the Federal government; any decision by a Federal administrative law judge (ALJ); or any decision, order or even complaint (prior to adjudication) issued by any Federal agency, board or commission. Although "alleged violations" has been removed from the original proposal, this change is effectively rendered moot given that the new rule still contains "complaints" and ALJ decisions prior to appeal as a basis for denial of federal contracts.

Implementation of the Rule would present many practical problems. Consideration needs to be given to the impracticality and high cost of designing, installing, and maintaining an integrated system to account (in real-time for legal violations or alleged violations that (a) require an affirmative certification, or (b) may be considered by COs in responsibility determinations. The vagueness of the categories of laws cited in the Rule (e.g., consumer protection laws) makes it difficult to identify which violations require certification. Installation of a system to enable companies to make necessary certifications and the potential liability under False Statements Act and similar laws would be a deterrent to smaller and commercial item companies. In addition, the cost and uncertainty associated with accounting properly for the cost allowability amendments, especially given the vagueness of the labor relations principle, would also deter companies from competing.

Respectfully yours,

MAXIM Systems, Inc.

Linda Clowers

Linda D. Clowers
Vice President